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8 UNITED STATES DISTRICT COURT  
9 WESTERN DISTRICT OF WASHINGTON  
10 AT TACOMA

11 THOMAS ALLEN GORDON,

12 Plaintiff,

13 v.

14 JOE BARNETT, *et al*,

15 Defendants.  
16

Case No. C03-5524KLS

ORDER ON REMAND  
DIRECTING DEFENDANTS TO  
FILE MOTION FOR SUMMARY  
JUDGMENT REGARDING DUE  
PROCESS ISSUE

17 This matter has been referred to Magistrate Judge Karen L. Strombom pursuant to 28 U.S.C. §  
18 636(b)(1), Local Rules MJR 3 and 4, and Federal Rule of Civil Procedure ("Fed. R. Civ. P.") 72. This  
19 case is back before the Court on the Ninth Circuit Court of Appeals Decision to affirm in part, vacate in  
20 part and remand for further proceedings this Court's order, dated April 3, 2008 (Dkt. #188), granting  
21 defendants' motion for summary judgment (Dkt. #162). After reviewing the Ninth Circuit's opinion (Dkt.  
22 #194) and the balance of the record, the Court hereby orders as follows:

23 On July 6, 2009, the Ninth Circuit issued its opinion regarding plaintiff's appeal of this Court's  
24 order, finding that the Court properly granted summary judgment on plaintiff's claim that his placement  
25 on Nutraloaf violated the Eighth Amendment's prohibition against cruel and unusual punishment. (*Id.* at  
26 p. 2). The Court of Appeals went on to find in relevant part, however, as follows:

27 . . . [Plaintiff] also claimed that he was placed on Nutraloaf without a hearing  
28 and that defendants were therefore prohibited from punishing him. The Fourteenth  
Amendment's Due Process Clause prohibits a jail from "punishing" a pretrial detainee  
without a due process hearing. There is no dispute that Gordon was placed on the

1 Nutraloaf diet as punishment for his disciplinary infractions; as such, he was entitled to  
2 a due process hearing. . . .


3 We remand for further proceedings on Gordon's due process claim consistent  
4 with this disposition.

5 (Id.) (internal citations omitted). On July 29, 2009, the Court of Appeals issued its mandate. (Dkt. #196).  
6 Accordingly, this matter is now back before this Court.

7 As the parties already completed discovery in this matter prior to the defendants filing their  
8 motion for summary judgment, and as there is no indication further discovery is necessary at this time,  
9 defendants hereby are ordered to file a motion for summary judgment in regard to the one remaining issue  
10 in this case concerning due process by **no later than October 30, 2009**, to be noted for consideration on  
11 **November 27, 2009**. Plaintiff shall file a response to defendants' motion for summary judgment, if any,  
12 by **no later than November 23, 2009**. Defendants' reply to plaintiff's response, if any, shall be due by  
13 **no later than November 26, 2009**.

14 The Clerk is directed to send a copy of this Order to plaintiff and counsel for defendants.

15 DATED this 31st day of July, 2009.

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18 Karen L. Strombom  
19 United States Magistrate Judge  
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